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EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

NOTIFICATION

New Delhi, the 6th September 1968

S.O. 3292.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following Award of Shri P. C. Rai, Arbitrator in the industrial dispute between the employers in relation to the Banki Colliery of Messrs, National Coal Development Corporation Limited, P.O. Banki Mogra, District Bilaspur and their workman which was received by the Central Government on the 19th August 1968.

AWARD

Arbitration Award of Shri P. C. Rai, Regional Labour Commissioner (Central), Jabalpur in the case of Shri R. K. Jain, General Mazdoor (Cat. I) of Banki Colliery of N.C.D.C. Limited.

RLC FILE No. J-81(7)/68

M/I&E FILE No. 5/58-A/67/LRII

PRESENT:

Shri P. C. Rai, Regional Labour Commissioner (Central), Arbitrator.

Representing Employers.—Shri S. P. Mathur, Deputy Superintendent of Collieries, Banki Colliery of M/s. National Coal Development Corporation Limited, P.O. Banki Mogra, District Bilaspur.

Representing workman.—Shri R. K. Jain, s/o Shri Pyaralal Jain, P.O. Rahatgarh, District Saugon.

Ministry of Labour, Employment and Rehabilitation, Department of Labour and Employment, by notification No. 5/58-A/LRII dated the 3rd June 1968 published an Order in the Gazette of India, which included an agreement dated the 17th April 1968 under Section 10-A of the Industrial Disputes Act 1947. By this order the dispute was referred to my arbitration. The following is the relevant portion of the agreement:—

“It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri P. C. Rai, Regional Labour Commissioner (Central), Jabalpur.”

(i) *Specific matters in dispute:*

- (I) Whether Shri R. K. Jain, General Mazdoor (Category I) performed duties of a Clerk or a Semi-Clerk or of a General Mazdoor during the period of his employment in Banki Colliery of Messrs National Coal Development Corporation Limited from 16th January 1967 to 10th July, 1967? In either case to what relief is he entitled?
- (II) In the light of above, whether Shri R. K. Jain was governed by National Coal Development Corporation Rules or by Colliery's Certified Standing Orders and whether the act of termination of services of Shri R. K. Jain by the management with effect from 11th July 1967 was legal and justified? If not, to what relief is he entitled?
- (iii) *Details of the parties to the dispute including the name and address of the establishment or undertaking involved.*—Employers in relation to the Banki Colliery of M/s. National Coal Development Corporation Limited, P.O. Banki Mogra (District Bilaspur) M.P. and their workman, Shri R. K. Jain, General Mazdoor (Category I).
- (iv) *Name of the union, if any, representing the workman in question.*—None.
- (v) *Total number of workmen employed in the undertaking affected.*—1250.
- (vi) *Estimated number of workmen affected or likely to be affected by the dispute.*

We further agree that the decision of the Arbitrator shall be binding on us.

The arbitrator shall make his award within a period of 3 months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

2. In response to my request dated 18th May 1968, Shri R. K. Jain submitted his written statement on 25th May 1968 (Appendix 'A') and the management submitted their written statement on 6th June 1968 (Appendix 'B'). Both the parties jointly agreed that the Award may be given by me by 16th August 1968.

3. The hearings in this case were fixed on 4th June 1968 and on 4th July 1968.

(I) *Whether Shri R. K. Jain was a clerk-semi clerk or a General Mazdoor.*

4. According to the management Shri Jain was appointed on Category I rates of pay but was a semi clerk. Shri R. K. Jain admitted that he was employed on Category I wages. It was admitted by both parties that he was not a General Mazdoor Category-I. It was admitted by both parties that Shri Jain was a weekly paid staff not covered by certified Standing Orders but by National Coal Development Corporation Rules. The duties performed by Shri Jain were as follows:—

- (1) Work in connection with Welfare Fund upto date accounts.
- (2) Pursue papers, send to different departments and report action taken and present position bonus, wages leave put up report.
- (3) Compliance of agreed decisions with respective Unions put up report.
- (4) Complete distribution of cards of Annual Recreation Welfare Fund.
- (5) Complete Account of Labour Welfare Fund till 30th June 1967.
- (6) Enquiry and registration of workers complaint and report on them.

The management's representative admitted that he was partly doing field work and partly working in office. Shri R. K. Jain admitted that he was not doing typing work but was preparing small drafts, did filing work and Accounts work of Welfare Fund and payments to Labour Welfare Fund. The parties had no other submission to make on this issue.

(II) *Whether he was governed by National Coal Development Corporation Rules or Certified Standing Orders:*

5. Shri R. K. Jain was a weekly paid Category I employee. Shri R. K. Jain submitted that he was governed by Standing Orders. The management maintained that his services were regulated by specific terms of contract and as he was doing semi-clerical work which was done by monthly paid employee, he was governed by National Coal Development Corporation Rules. The parties have admitted in foregoing para that Shri Jain was governed by National Coal Development Corporation Rules. The parties had no other submission to make on this issue.

(III) *Whether termination was legal?*

6. During the course of hearing it was submitted by the management that his (Shri R. K. Jain) services were terminated keeping in view their Order Nos. BNK/00/19132, dated the 19th January 1967 and BNK/00/1031.36 dated the 28th April 1967, whereas it was submission of Shri Jain that termination of his service was without reason and as such it was illegal. Shri Jain submitted that he may be reinstated. At this stage the parties had no other submission to make on this issue.

7. After taking into accounts the facts of the case and written statements of the parties, I have come to the following conclusion in respect of the various items referred to me for arbitration.

8. From the above it is obvious that Shri R. K. Jain was appointed on Category I wages and was required to perform certain clerical duties enumerated in foregoing paras and there was no clerk in Labour Welfare Officer's Office. It has been admitted by the parties that he was not doing the work of a General Mazdoor as per job description in L.A.T. Award and he was also not considered in that Category at the time of retrenchment of General Mazdoors. It has been admitted by the parties that he was working as a semi-clerk. Shri Jain was not given Lower Division Clerk scale of pay on account of administrative difficulties. I have come to the conclusion that mere performance of partly clerical and partly field work did not make him a semi-clerical worker. In the absence of any clerk in the Labour Welfare Officer's Office, he had to perform clerical duties and as such he should be paid at the current rates applicable to the Lower Division Clerks i.e., in the scale of Rs. 110—180 with other usual allowances namely Dearness allowance at the rate of Rs. 84 and Project Allowance at the rate of 10 per cent basic pay. The difference of pay due to Shri Jain as a result of this award less amounts already drawn by him for the period 6th January 1967 to 10th July 1967 be paid to him on or before 16th October, 1968.

9. Shri Jain was never treated as a General Mazdoor and was performing certain clerical duties. The mere fact that he was paid weekly wages would not make Certified Standing Orders applicable to him. At the time of hearing parties admitted that Shri Jain was not covered by Certified Standing Orders but by National Coal Development Corporation Rules. His appointment was regulated by the terms of his appointment and actual work performed by him. Since clerical employees are covered by National Coal Development Corporation Rules, therefore on analogy I have come to the conclusion that he was not covered by Certified Standing Orders but by National Coal Development Corporation Rules. Shri Jain's work was not found satisfactory by the National Coal Development Corporation authorities and no arguments were put forward by Shri Jain on this count. So I have come to the conclusion that action of the management in terminating the services of Shri Jain was justified and legal. In the circumstances, Shri Jain is not entitled to any relief on this count.

10. I, therefore, give my award in the terms stated above.

(Sd.) P. C. RAI,

Jabalpur,

Regional Labour Commissioner, (Central)

Dated the 10th August, 1968

APPENDIX 'A'

श्री

सेवा में,

राहतगढ़

माननीय रीजनल लेवर कमिशनर एवं निर्णयिक महोदय,
(सेन्ट्रल), जबलपुर (मा प्र०)

दिनांक 25-5-68

सप्रेम नमस्ते ।

दिनांक 22-5-68 को मध्याह्न 1 बजे के पश्चात् आप के कार्यालय जबलपुर से भेजा हुआ पत्र मुझ मिला। जैसा आपने मूँझे (Statement) भेजने के सिखा उसी के अनुसार मैं आपकी

सेवा में अपना (Statement) विचार-विमर्श के लिए भेज रहा हूं। आशा है श्रीमान मेरे इस (Statement) पर विचार करने के बाद अपनी कार्यवाही द्वारा इस विवाद (dispute) का फैसला अवश्य करेंगे तथा मुझ गरीब अनाथ की रोजी-रोटी अपनी कानूनी कार्यवाही द्वारा वापिस दिलाने की कृत्य करेंगे।

कष्ट के लिए धमा चाहता हूं।

(A) Part Claim for Service.

(I) Office Order No. BNK 19132 dated 19-1-67 में यह स्पष्ट लिख दिया गया है कि further extension if any, will be considered on putting satisfactory work इस condition को ध्यान में रखते हुए management ने प्रार्थी को service extension के लिए letter No. BNK/00/1031-36 dated 28-4-67 को work satisfactory होने पर आगे बढ़ाया गया। इस condition के अनुसार management का प्रार्थी की dt. 6-7-67 की application का जो यह उत्तर (Reply) लिखकर letter No. BNK/DR/ Estb. 3938 में दिया है कि work satisfactory नहीं था, यह सर्वथा प्रतुचित है। क्योंकि work unsatisfactory होने पर further extension के लिए letter नहीं दिया जा सकता। सच तो यह है कि management ने प्रार्थी को जो further extension के लिए letter दिया है उससे यह सिद्ध होता है कि प्रार्थी का work पूर्णतः satisfactory था इसलिए management ने प्रार्थी के कार्य को देखते हुए further Extension letter dated 28-4-67 को Office Order No. BNK. 1031-36 के अनुसार दिया।

(ii) Dated 19-1-67 के Office Order No. BNK 19132 में management ने यह स्पष्ट लिख दिया है कि This appointment is purely temporary and for period of three months इस condition के अनुसार प्रार्थी का Temporary period dated 15-4-67 को समाप्त हो चुका था। परन्तु Management ने 12 दिन और अधिक कार्य करवा लेने के बाद Dt. 28-4-67 को यह Further continuity service extension letter दिया जबकि प्रार्थी को further extension के लिए letter during probation Period ने मिलना चाहिये था। परन्तु management ने यह further extension letter during probation period में न देकर 12 दिन और अधिक कार्य करवा लेने के बाद dated 28-4-67 को दिया जो कि कानून के खिलाफ कार्य किया गया है।

(III) Dt. 6-7-67 की Application में प्रार्थी ने स्पष्ट शब्दों में लिखकर management से प्रार्थना की कि वह प्रार्थी के unsatisfactory work का बतलाने का कष्ट करे। तब 12-7-67 का letter No. BNK/Dr/ Estb. 3938 में management ने जो यह reason show किया है कि वह प्रार्थी के कार्य शुरू से ही संतुष्ट नहीं था तब फिर management को चाहिये था कि वह प्रार्थी को work के सन्तुष्ट नहीं होने पर warning letter या charge-sheet इत्यादि का प्रयोग करता अथवा Management को चाहिये था कि वह work के सन्तुष्ट नहीं होने पर प्रार्थी की service during probation period में समाप्त कर देता या management को चाहिये था कि वह प्रार्थी को work के unsatisfactory होने पर further extension

के लिए letter नहीं देता। सच तो: यह है कि management प्रार्थी को work unsatisfactory के विषय में न तो कोई warning letter दे सका और न ही कोई charge sheet इत्यादि issue कर सका। इन सब प्रमाणों से यह सिद्ध होता है कि प्रार्थी का work पूर्णतः satisfactory था।

(iv) बास्तव में Sh. S. P. Mathur (Dy. Supdt. of Collieries) ने प्रार्थी का नाम Conciliation Officer के 31st May, 1st June एवं 12th June, 1967 के conciliation में monthly paid staff clerk के विषय में पढ़ा तो प्रार्थी को (Management Officer) Sh. S. P. Mathur ने स्वयं बुलाकर यह कहा कि जैन आप Union में सम्मिलित होने लगे हैं और आपका नाम M.P.C.W.F. Union ने monthly paid staff clerk के लिए दिया है। इसी कारण को जानकर मुझे management ने यह wrongful termination notice दिया।

इन प्रमाणों से यह सिद्ध है कि प्रार्थी की service management ने जबरदस्ती कानून के बिंदाफ 11-7-67 से समाप्त कर दी।

(B) Part I Claim for post and salary

भारतीय संविधान (Indian Constitution) में According to the work के अनुसार Executive (कार्यकारी) Parliamentary (संघीय) Judiciary (न्यायपालिका) का विभाजन According to the work के अनुसार किया गया है। इसी के अनुसार ही Chief Engineer, Chief Commissioner, Doctor, R.L.C.U.D.C., C.L.C., L.D.C. इत्यादि का विभाजन (Classification) किया गया है। इसलिए प्रार्थी को According to the work के अनुसार Lower Division Clerk का पद (Post) तथा वेतन (Salary) मिलना आवश्यक है। इसी के हेतु प्रार्थी अपनी मांगें करता आया है और कर रहा है।

(ii) (Management Officer) Shri S.P. Mathur तथा Labour Welfare Officer के स्वयं हस्तालिखित पत्रों से यह स्पष्ट है कि जो कार्य प्रार्थी ने किये हैं वे अवश्य ही Lower Division Clerk के हैं। इन प्रमाण पत्रों की सत्य प्रति (copy) आपकी सेवा में श्रीमान ALC (C), Bilaspur, M.P. के द्वारा भेज दी गई है।

(III) जो प्रमाणपत्र आपकी सेवा में भेजे जा चुके हैं उन सभी से यह स्पष्ट है कि प्रार्थी से जबरन जबरदस्ती कानून के बिंदाफ कार्य करवाये गये और प्रार्थी को न तो Corporation Rules में रखा गया और न ही उसको According to the work के अनुसार वेतन दिया गया।

(iv) सच तो यह है कि Labour Welfare Officer के office में कोई clerk भी 16-1-67 से 10-7-67 तक नहीं था। सभी clerical work प्रार्थी स्वयं करता था जैसा कि उसके माननीय अधिकारीण उसे करने को कहते गये। यदि Labour Welfare Officer के office में कोई clerk 16-1-67 से 10-7-67 तक था तो उसका appointment letter प्रस्तुत किया जावे जिसका सम्पर्क L. W. Office में हो।

(v) प्रार्थी आरम्भार (Again and again) Conciliation Officer से प्रार्थना करता रहा कि श्रीमान उसे According to the work के अनुसार monthly paid

staff clerk का post (पद) तथा salary (वेतन) दिलाने का कष्ट करें इसका प्रमाण (proof) Conciliation Officer के प्रमाणपत्रों से स्पष्ट है।

श्रीमान की सेवा में प्रार्थी आना statement भेज रहा है। आशा है कि श्रीमान कानूनी कार्यवाही द्वारा मुझ गरीब का फैसला शीघ्र करने की कृत्ति करेंगे। इसके लिए प्रार्थी श्रीमान का सदैव आभासी रहेगा।

धन्यवाद

आपका प्रार्थी

R. K. JAIN

आर० के० जैन

APPENDIX 'B'

OFFICE OF THE DY. SUPDT. OF COLLIERIES
NATIONAL COAL DEVELOPMENT CORPORATION LIMITED

(Government of India Undertakings)

No. BNK/ARBIT(RKJ) 3308-9

By Registered
Dated 6th June, 1968

Shri P. C. Rai, Regional Labour Commissioner (C) and Arbitrator, 108, North Civil Lines,
Beohar Bagh, Jabalpur (M.P.)

Dear Sir,

SUBJECT :—*Arbitration agreement dated 17th April, 1968 between the management of Banki Colliery (N.C.D.C. Ltd.) and Shri R. K. Jain, General Mazdoor Cat.-I, U/S 10-A, of the Industrial Disputes Act.*

Reference your letter No. J-81(7)/68, dated 18th May, 1968 as desired by you, I am giving the statement on behalf of the management in the above case.

Shri R. K. Jain was appointed for certain works in the office of the Labour Welfare Officer (Encl-'A') and was placed in Cat. I of the Coal Award with effect from 16th January, 1967. As can be appreciated a general Mazdoor in the L.A.T. Award is an un-skilled labour and obviously such a labour is not required in the office of the Labour Welfare Officer. Sri Jain was actually given the work of semi-clerk but since sanction for such a monthly paid post did not exist, he was given wages equal to Cat. I of the Coal Award. In his statement before the Assistant Labour Commissioner(C), Bilaspur Sri Jain had admitted that he was doing clerical works in the office of the Labour Welfare Officer, Banki.

The fact that Sri Jain was never treated as a General Mazdoor is also confirmed by the action of the management in retrenching senior General Mazdoors in Cat. I of the Coal Award (Encl-'B') and retaining the services of Sri Jain. He was actually never treated as a General Mazdoor and he never performed the duties of a General Mazdoor as listed in the job description of the L.A.T. Award.

Sri Jain has actually claimed previously and also now the wages of a Clerk in the monthly scale as applicable to National Coal Development Corporation monthly paid employees.

Coming to the question whether Shri Jain had worked as a Clerk or a Semi-Clerk, it can be seen from the enclosed slips (Encl-'C'-C-1. and C-2) that Shri Jain was asked to collect certain information or compile certain date regarding labour for compliance of agreed decisions with the representatives of the Unions. He had never written or drafted any letter or done any typing work or by another routine work of a lower Division Clerk. His main job was to put up certain figures regarding labour, collect workers grievances, to chase up complaints given by labour and to draw attention to the agreed decisions for necessary compliance of the management. He had, therefore clearly performed the duties of a Semi-Clerk (that means partly clerical and partly field work) and the management had offered to pay him difference of wages between the monthly paid Semi-Clerk, of National Coal Development Corporation and Cat. I of the Coal Award.

Since Sri Jain had done semi-clerical work and since all semi-clerical works in N.C.D.C. were being performed (and are still being performed) by monthly paid employees governed by National Coal Development Corporation Rules, Sri Jain was actually governed under the same rules. The mere fact that he was paid wages equal to Cat. I of the Coal Award does not change the picture. If Standing Orders are made applicable in his case, it will virtually mean that clerical work from a person getting wages equal to Cat. I of the Coal Award is proper and justified. Such a thing cannot be acceptable either to the person concerned or to the other clerical staff who are performing similar duties. It would also mean prompting employers to take clerical work from General Mazdoors Cat. I of the Coal Award indefinitely in future. The management has done wrong in paying him Cat. I wages, which was due to certain unavoidable administrative difficulties. They are prepared to pay the difference of wages and it is not understood why this was not acceptable to the person concerned. No other mistake has been done by the management. Their action of removing Shri Jain from services on grounds of unsatisfactory work was legal and justified.

Shri Jain is claiming protection under Standing Orders only because his services have been terminated.

We would have appreciated his stand:—

(a) if he could not have demanded wages equal to other monthly paid clerical staff of N.C.D.C.

and (b) if he would have stated that he is governed by Standing Orders and not by National Coal Development Corporation Rules and as such his probationary period could not be extended beyond three months immediately after receiving the letter No. BNK/OO/1031-36, dated 28th April, 1968 (Encl: 'D').

Payment of wages according to National Coal Development Corporation scales and applicability of Standing Orders cannot go together particularly when it is clearly stated that the relevant Standing Orders are not applicable to monthly paid employees of National Coal Development Corporation Limited.

Yours faithfully,

(Sd.) S. P. MATHUR,

for and on behalf of the management of Banki Colliery of M/s. N.C.D.C. Ltd., Bankimogra.

Encl. 'A'

Copy of Office Order No. BNK/00/19132, dated 19th January, 1967

OFFICE ORDER

Shri Rajendra Kumar Jain s/o Sri Pyarelal Jain is hereby appointed in Cat. I of the Coal Award with effect from 16th January, 1967. He is directed to report for work to the Labour Welfare Officer, Banki.

This appointment is purely temporary and for a period of three months from the date of his reporting for work. Further extension if any, will be considered on putting satisfactory work.

(Sd.)

Supt. of Collieries, Banki.

Copy for information and necessary action to:—

1. Labour Welfare Officer, Banki.
2. Bill Section/Bonus Section/CMPF.

Enclosure 'B'

List of General Mazdoors Senior to Shri R. K. Jain but terminated prior to his termination.

Name of General Mazdoors

Date of termination.

1. S/Shri Gopal Mishra s/o Meghnath Mishra
2. Gangu Ram s/o Sukharu.
3. Nathudas s/o Somaru.
4. Anganu s/o Budhwa.
5. Sadh Ram s/o Shriram.
6. Sukhdeo s/o Manglu Das.
7. Bodhan Sai s/o Ram Sai.

4th June, 1967

8. Sawan Singh s/o Rup Singh.	}	4th June 1967
9. Ramchandra Sahu s/o Puni Ram.		
10. Rothu Ram s/o Sukh Lal.		
11. Shyam Sunder s/o Seyer Singh.		
12. Puni Ram s/o Puran Singh.		
13. Manohar Singh s/o Budhan.		
14. Maya Ram s/o Gusan.		
15. Sewa Ram s/o Sakha Ram.		
16. Maya Ram s/o Bapla.		
17. Ramkrishna s/o Ombhagat.		
18. Fulsai s/o Basti Ram.		
19. Mohit Das S/o Bablo Das.		
20. Anand Ram s/o Jhagrha.		
21. Sunderlal s/o Ramprasad.		
22. Arunkumar s/o R. M. Lal.		
23. K. P. Mishra s/o M. N. Mishra		

Encl. 'C'

Shri Jain.

1. Welfare Fund upto date a/c.
2. Pursue papers sent to different departments and report action taken and present position Bonus and Wages, leave wages put up report.
3. Compliance of agreed decisions with respective Unions—put up report.

(Sd.) M. M. TEWARI,
Labour Officer, Banki
10-3-1967.

Encl. 'C-1'

Shri Jain.

1. Complete distribution of Card of A.R.W.F.
2. Complete A/C of L.W.F. till 30th June, 1967.
3. Enquiry and registration of workers complaints and report thereof.

(Sd.) M. M. TEWARI,
10-6-1967.

Encl. 'C-2'

Shri Jain.

L.W.O. Office

Please check whether one day's wages have been deducted for the following for Annual Recreation and Welfare Fund.

Shri Pillai, Welder, Shri Nair, Welder Helper.

They say they have not filed their objections.

H

(Sd.) S. P. MATHUR,
28-3-1967.

Encl. 'D'

Copy of Office Order No. BNK-00/1031-36, dated 28th April, 1967

OFFICE ORDER

The services of Shri R. K. Jain are hereby extended for a period of another three months to afford him a chance for improvement and efficiency in his work. This is in continuation of this Office Order No. BNK-00-19132, dated 19th January, 1967. His services may be terminated earlier without notice and without assigning any reason what-so-ever.

(Sd.)*

Supdt. of Collieries, Banki.

Distribution.

Bill Section/Bonus Section/LWO/CM/person concerned.

[No. 5/58A/67/LRII.]

BALWANT SINGH, Under Secy.